

interests whatsoever in the estate of the deceased, she had not sold anything.

With all due respect to learned counsel for the appellants, I am unable to agree with his submissions.

Now, what took place after the appellants had lost their appeal in the Federal Court? They negotiated with Tan Lian Cheow and, mark you, they negotiated on the basis that Tan Lian Cheow was a widow of the deceased and entitled to share in the estate of the deceased and that she was an administratrix of the estate of the deceased. The right of Tan Lian Cheow to share in the estate of the deceased was property which could be the subject of bargain and sale. There was no doubt about it that the negotiation resulted in Tan Lian Cheow selling her share in the estate. What else could the \$220,000 be for except for her share in the estate? If that was not the case it is rather a surprising thing that Tan Lian Cheow should have been paid so large a sum of money for nothing. The true nature and intended purpose of the said deed was to complete the oral sale which took place at the negotiation.

I am of the opinion that an instrument attracts *ad valorem* duty if it is intended by the parties to implement an agreement of sale between them. As Lord Denning said in the case of *Oughtred v. Commissioners of Inland Revenue* (2) at p. 233:

"In my opinion, every conveyance or transfer by which an agreement for sale is implemented is liable to stamp duty on the value of the consideration. It is not necessary for the instrument of implementation to be between the same parties as the agreement for sale, nor for it to relate to the self-same property as the agreement for sale. Suffice it that the instrument is the means by which the parties choose to implement the bargain they have made. It is then a 'conveyance or transfer on sale' of any property — which I take to mean a conveyance or transfer consequent upon the sale of any property and in implementation of it."

For these reasons I am of the opinion that the said deed is a "conveyance on sale of property" within the meaning of the Ordinance. The result is that, in my opinion, the conclusion arrived at by the Commissioner of Stamps was sound and that this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill.*

**CHUA YEW PHONG v. A. S. YEO;
EDWARD LUMLEY & SONS (M) LTD. —
3rd PARTY**

[O.C.J. (MacIntyre J.) June 6, 1966]

[Ipoh — Civil Suit No. 526 of 1965]

*Contract — Insurance — Insurance broker —
Whether insurance broker liable under policy of insurance.*

Advocate and Solicitor — Breach of professional duty — Claim for indemnity by underwriters of policy of insurance — Whether underwriters or insurance brokers — Third party — Application to strike off.

The defendant who had been sued for damages for breach of professional duty served a third party notice on the third party, alleging that they were the underwriters of a policy of insurance whereunder they were liable to indemnify him against damages arising out of the breach of professional duty. The third party thereupon applied for their name to be struck off from the proceedings on the ground that they were not the underwriters but merely a firm of insurance brokers who effected the insurance.

Held: neither in law nor in contract was the third party in this case liable in damages to the defendant under the insurance policy and the third party was therefore entitled to be released from the proceedings.

Cases referred to:—

(1) *Provincial Insurance Co. v. Leduc* (1874), L.R. 6 P.C. 224.

(2) *Kensington v. Inglis* 8 East 273.

(3) *Lloyds v. Harper* (1881), 16 Ch. D. 290 C.A.

(4) *Provincial Insurance Co. Ltd. v. Crowder* 27 Ll. L.R. 28.

CIVIL SUIT.

F. C. Arulanandom for the defendant.

Daim Zainuddin for the third party.

Cur. Adv. Vult.

MacIntyre J.: In this action the plaintiff claims \$54,000 by way of damages against the defendant for breach of professional duty as a solicitor.

By an order made by me in chambers on the 14th day of February 1966, the defendant was granted leave to issue and serve upon Messrs. Edward Lumley & Sons (Malaya) Ltd. (hereinafter referred to as the third party) a third party notice under O. 16A r. 1 of the Rules of the Supreme Court. This order was made on an application supported by an affidavit dated the 11th of January 1966 in which the defendant had averred that the third party were the underwriters of a policy of insurance whereunder they were liable to indemnify him against damages arising out of a breach of professional duty.

The present application is by the third party praying for an order that their name be struck off from these proceedings with costs on the ground that they are not the underwriters of the policy of insurance but merely a firm of insurance brokers who effected the insurance. The affidavit of Hew Futt Chong dated the 2nd of March 1966 refers.

Then by an affidavit dated the 10th of March 1966 the defendant denied that the third party had acted merely as insurance brokers and averred that the third party were the principals or had held themselves as such when the insurance was effected. It was further alleged that

the third party had not at any time disclosed the name of the principals, if any, and had not disclaimed liability when notice of the claim for indemnity was served on them; and lastly, it was contended that even if the third party were not the underwriters, they were nevertheless liable because they had an interest in the contract.

These allegations and contentions were refuted by an affidavit dated the 21st of March to which is attached photostatic copies of correspondence which had passed between the defendant and the third party from which it appears that the defendant knew that the third party were not the underwriters.

The cover note of the insurance policy in the possession of the defendant contains the following information, namely:—

- (1) That defendant was insured with underwriters at Lloyd's, London;
- (2) That the policy of insurance was effected for the third party as brokers;
- (3) That the name of the underwriters would be supplied on application;
- (4) That the underwriters would, in relation to claims arising under the insurance submit to the jurisdiction of the courts of the States of Malaysia; and
- (5) That the service of legal process and other notices in respect of such claims shall be served upon M/S. Donaldson & Burkinshaw, 1st Floor, Mercantile Bank Building, Singapore, or Hongkong Bank Building, Kuala Lumpur.

The point taken before me by counsel for the defendant was that the third party as insurance brokers were the agents of the underwriters and were therefore liable under the contract of indemnity.

It was contended that by virtue of section 183 of the Contract (Malay States) Ordinance 1950, where a principal is resident abroad or when the agent had not disclosed the name of the principal or when the principal, though disclosed, cannot be sued, then in the absence of any contract to the contrary, a presumption arises, that the terms of the contract of employment between the principal and agent included a stipulation to the effect that the agent was personally bound by the terms of any contract he had entered into on behalf of his principal and could be sued for breach thereof.

Counsel further referred to article 127 of *Boustead on Agency* (12th Edition) for the proposition that an insurance broker may sue in his own name to enforce contracts of indemnity on behalf of his client. It was argued that if an insurance broker had the right to sue in order

A to enforce a contract of indemnity then he must be deemed liable to be sued for breach of the terms of the contract. I must reject this argument. If the principle is correctly understood then an insurance broker who is entitled to sue the underwriters is liable to be sued not by the assured but by the underwriters.

B I have considered the relevant authorities cited under the aforesaid article 127, namely, *Provincial Insurance Co. v. Leduc* ⁽¹⁾; *Kensington v. Inglis* ⁽²⁾; and *Lloyds v. Harper*. ⁽³⁾ The principle established by these authorities is that an insurance broker can sue the underwriters on behalf of his client to enforce the contract of indemnity. The question of whether an insurance broker could be sued to enforce the contract was neither considered nor discussed.

C In *Provincial Insurance Co. Ltd. v. Crowder*, ⁽⁴⁾ the question of whether a custom, alleged to be observed at Lloyd's, London, whereby an insurance broker is regarded as having assumed the underwriters' liability under a policy of insurance effected through him was considered; and it was held that no such custom existed.

D I think that the application to serve the third party notice in this case was made through a misconception of the law and of the functions of insurance brokers. The business of insurance brokers is to act as intermediaries between the insurance companies and the prospective policy holders. In effecting these contracts, the insurance brokers constitute themselves as agents of the policy holders and in that capacity may sue the underwriters on behalf of their clients to enforce a contract of indemnity; but that right to sue does not render them liable to be sued for indemnity under the contract with the underwriters. Since neither in law nor in contract is the third party in the present case liable in damages to the defendant under the insurance policy, the application to serve the third party notice on them was misconceived.

E The third party is therefore entitled to an order in terms of the prayers in the summons-in-chambers (enclosure 14) dated the 4th of March 1966.

H Order accordingly.
Solicitors: F.C. Arulanandom; Allen & Gledhill.

YONG NAM v. HOUSING & DEVELOPMENT BOARD

I [A.C.J. (Tan Ah Tah F.J.) June 10, 1966]
[Singapore — District Court Appeal No. 1 of 1966]

Housing and Development Board Ordinance, 1959, ss. 12 and 24A — Power of board — Whether mandatory for board to make standing orders — Meaning of "may" and "it shall be lawful".